

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TRAVIS MICKELSON, DANIELLE H.
MICKELSON, and the marital community
thereof,

Plaintiffs,

v.

CHASE HOME FINANCE LLC, et al.,

Defendants.

No. C11-01445 MJP

JOINT STATUS REPORT AND
DISCOVERY PLAN

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedures, Local Civil Rule 16, and the Court's Minute Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement [Dkt. 13] the parties, through their undersigned counsel submit this Joint Status Report and Discovery Plan.

1. Nature and Complexity of the Case.

a. Plaintiffs' Statement

This case involves a challenge to defendants' joint and in concert practices regarding real estate lending; the terms of plaintiffs' uniform deed of trust vis a vis the requirements of Washington's Deed of Trust Act; the effect of the securitization of Plaintiffs' Deed of Trust vis a vis the exclusion set forth in RCW 61.25.005 (2); the legitimacy of the MERS system for

1 purposes of creating a deed of trust that complies with and is entitled to enforced pursuant to
2 Washington's Deed of Trust Act; the whereabouts and ownership of the Mickelsens'
3 promissory note and the endorsements, if any, thereof; the substitution of trustees and the
4 duties of trustees viv a vis one another, the beneficiary and the Mickelsons; and foreclosure
5 practices, and damages.

6 This Court has previously dealt with similar cases and therefore is familiar with many
7 of the factual and legal issues likely to be encountered. Given this experience by the Court and
8 the parties the facts involved in this litigation likely will be less complex than they otherwise
9 might be.
10

11 The law is complex because it is in large part unresolved nationally and in the state of
12 Washington. For example, issues relating to the MERS system are currently set for oral
13 argument before the Washington Supreme Court on February 15, 2012 pursuant to cases
14 certified by this Court. *See Bain v. Metro. Mortg. Group Inc., et al.* Supreme Court No. 86206-
15 1; *see also Selkowitz v. Litton Loan Servicing, LP, et al.*, Supreme Court No. 86207-9.
16 Additionally, the Supreme Court is in the process of resolving the appropriateness of
17 defendants' waiver defense. *See Albice v. Premier Mortg. Servs. of Wash., Inc.*, 239 P.3d 1148
18 (2010), *review granted* 170 Wn.2d 1029, 249 P.3d 623 (2011).
19

20 Plaintiffs claim the Deed of Trust agreement is unconscionable and violates the Deed of
21 Trust Act, RCW 61.24 *et seq.* Additionally plaintiffs claim defendants have violated the duty
22 of good faith implied in the contracts and that the trustees have also breached their statutory
23 duty of good faith and violated the Criminal Profiteering Act, RCW 9A.82 *et seq.*, the
24 Consumer Protection Act, RCW 19.86 *et seq.*, and the Federal Debt Collection Practices Act,
25 15 U.S.C. § 1692 *et seq.*
26
27

b. Defendants' Statement

Defendants respond Plaintiffs have waived most of their claims by failing to restrain the foreclosure sale, and further assert Defendants had authority to foreclose and did so properly.

2. Statement of which ADR Method Should Be Used.

The parties agree that mediation is an appropriate ADR method that should be used.

3. Timing of Mediation.

The parties agree that mediation is not appropriate until after the parties complete discovery.

4. Proposed Deadline to Join Additional Parties or Amend the Pleadings.

The parties propose that December 15, 2011 be the deadline to join additional parties.

5. Discovery Plan.

a. The Fed. R. Civ. P. 26(f) conference occurred on October 27 and 28, 2011. The parties anticipate that they will provide initial disclosures by November 4, 2011.

b. The parties anticipate the subjects of discovery may include Plaintiffs' loan file and communications with Chase, and the foreclosure file. The parties do not anticipate a need to conduct discovery in phases.

c. **Plaintiffs' Proposed Discovery:** Plaintiffs believe they need discovery into Defendants' practices regarding real estate lending; the terms of plaintiffs' uniform deed of trust vis a vis the requirements of Washington's Deed of Trust Act; the effect of the securitization of Plaintiffs' Deed of Trust vis a vis the exclusion set forth in RCW 61.24.005(2); the legitimacy of the MERS system for purposes of creating a deed of trust that complies with and is entitled to enforcement pursuant to Washington's Deed of Trust Act; the whereabouts and ownership of the Mickelsons' promissory note and the endorsements, if any,

thereof; the substitution of trustees and the duties of trustees vis a vis one another, the beneficiary, and the Mickelsons; and foreclosure practices and damages.

d. Defendants' Discovery: Defendants dispute the need for most of the discovery outlined by Plaintiffs. Defendants believe that should this case survive a motion to dismiss, discovery will be necessary into the actions of the named Plaintiffs and into the foreclosure and loan file documents.

e. The parties agree that discovery should be conducted pursuant to the Federal Rules of Civil Procedure. The parties do not currently see a need to change the discovery limitations imposed by the Federal Rules of Civil Procedure and the Local Rules for the Western District of Washington. If the parties determine at a later date that discovery limitations should be adjusted, the parties may stipulate to adjusted limitations.

f. The parties agree to cooperate in good faith in discovery, to use best efforts to comply with discovery requests, and act reasonably in propounding discovery. Defendants do not foresee deposing persons other than Plaintiffs.

g. Defendants may seek a protective order at a later date. Plaintiffs may or may not agree with Defendants' request. The parties will cooperate to resolve any discovery disputes before submitting them to the Court.

6. Discovery Completion.

The parties agree that discovery can be completed by September 1, 2012.

7. Magistrate.

No.

8. Bifurcation.

The parties agree that bifurcation is not appropriate for this matter.

9. Pretrial Statements and Order.

At this time the parties do not believe the pretrial statements and pretrial order called for by Local Rules CR 16(e), (h), (i), and (l), and 16.1 should be dispensed with in whole or in part for the sake of economy.

10. Other Suggestions.

At this time, the parties have no suggestions for shortening or simplifying the case. Counsel for the parties expect that they will find ways to simplify the case.

11. Trial Date.

The parties anticipate that this matter will be ready for trial on December 1, 2012.

12. Trial Type.

Bench jury Trial.

13. Length of Trial.

The parties anticipate that trial will last 5-7 days

14. Name, Addresses, and Telephone Numbers of Trial Counsel.

Plaintiffs are represented by Scott E. Stafne, who may be contacted at Stafne Law Firm, 239 N. Olympic Ave., Arlington, WA 98223. Mr. Stafne's phone number is (360) 403-8700.

Defendants Chase, MERS, and Federal Home Loan Corporation are represented by Fred B. Burnside and Rebecca Francis, both of whom may be contacted at Davis Wright Tremaine, 1201 Third Avenue, Suite 2200, Seattle, Washington 98101. Mr. Burnside's phone number is (206) 757-8016. Ms. Francis's phone number is (206) 757-8285.

Defendant Chicago Title Insurance Company is represented by Erin M. Stines, who may be contacted at the Fidelity National Law Group, A Division of Fidelity National Title Group, Inc., 1200 Sixth Avenue, Suite 620, Seattle, WA 98101. Ms. Stines's phone number is (206) 223-4525.

1 Defendant MORTGAGEIT, INC., is represented by John S. Devlin III and Andrew G.
2 Yates, who may be contacted at Lane Powell, PC, 1420 Fifth Avenue, Suite 4100, Seattle, WA
3 98101. Mr. Devlin and Mr. Yates may be reached at the phone number (206) 223-7000.

4 Defendants Routh Crabtree Olsen, P.S., and Northwest Trustee Services, Inc., are
5 represented by Heidi E. Buck, who may be contacted at Routh Crabtree Olsen, P.S., 13555 SE
6 36th Street, Suite 300, Bellevue, WA 98006. Ms. Buck's phone number is (425) 458-2121.

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8 **15. Scheduling Conference.**

9 The Court need not conduct a scheduling conference before it enters a scheduling order.

10 **16. Results of the Fed. R. Civ. P. 26(f) Conference.**

11 The parties agreed to the terms in this Joint Status Report and Discovery Plan.

12 DATED this 31st day of October, 2011.

13
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16 N.A., MERS, and Federal Home Loan
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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on October 31, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 31st day of October, 2011.


Sheila Rowden